

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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D.J.C.V., minor child, and G.C., his Father, : Case No. 1:20-cv-5747-PAE
Plaintiffs, :
v. : Hon. Paul A. Engelmayer
UNITED STATES OF AMERICA, :
Defendant. :
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**MOTION OF DOCTORS BETH VAN SCHAACK (J.D., PH.D.),
DARYN REICHERTER (M.D.), AND RYAN MATLOW (PH.D.) FOR
LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT'S MOTION TO DISMISS THE COMPLAINT**

Doctors Beth Van Schaack (J.D., Ph.D.), Daryn Reicherter (M.D.), and Ryan Matlow (Ph.D.), through the undersigned counsel, respectfully move the Court for leave to file a brief as *amici curiae* in support of Plaintiffs' Opposition to Defendant's Motion to Dismiss the Complaint. In support of this motion, they state as follows:

1. A key issue in this case is whether family separation constitutes torture. The torture alleged by Plaintiffs involves complicated questions regarding the physical and psychiatric impact of that trauma in children and adults. *Amici curiae* have expertise in international human rights and the science of the physical and psychological changes and mental health pathology caused by trauma on adults and children, including family separation. *Amici curiae* have extensive experience researching and working to prevent and redress violations of international human rights law, including in the immigration and asylum context. Since the inception of the Trump Administration's family separation policy, *amici curiae* have important experience studying the mental and physical suffering endured by separated families. As a result, *amici curiae* have a

significant interest in Plaintiffs' allegations that the separation of D.J.C.V. from his asylum-seeking parent constituted torture in violation of international human rights law.

RELEVANT QUALIFICATIONS OF AMICI CURIAE

2. *Amici curiae* are professors and faculty fellows at the Center for Human Rights and International Justice (the "Center") and at the Human Rights in Trauma Mental Health Program (the "Program"), both at Stanford University.

3. The Center's mission is to equip a new generation of leaders with the knowledge and skills necessary to protect and promote human rights and dignity for all.

4. The Program—an interdisciplinary collaboration between the Center, Stanford Law School faculty, and Stanford University School of Medicine's Department of Psychiatry and Behavioral Sciences—is committed to advancing and applying the scientific knowledge of the physical and psychiatric impact of trauma on survivors of human rights abuses with an eye towards informing transitional justice and judicial processes.

5. The Program focuses on the science of the psychological changes and mental health pathologies caused by trauma on individuals, their families, and their communities, over time and between generations. Program affiliates analyze and build upon available data to clearly identify the impact on human psychology caused by various forms of mass trauma, including genocide, mass killings, rape, and torture. This analysis is used to clarify the science and/or advocate for the survivors' human rights and access to mental health in a range of settings, including criminal trials, civil suits, and asylum proceedings. Program members participate in these transitional justice processes in a range of ways, including by providing expert testimony and reports and consulting with the legal teams prosecuting perpetrators or representing victims.

6. *Amicus curiae* Dr. Van Schaack, J.D., Ph.D., is the Leah Kaplan Visiting Professor

in Human Rights at Stanford Law School where she teaches in the areas of international human rights, international criminal law, and atrocities prevention.¹ Dr. Van Schaack's scholarship is primarily concerned how the international community can better design and implement responses to communities at acute risk of mass violence and torture. She also directs the clinical human rights program at Stanford Law School, which gives students the opportunity to participate in human rights work around the world on behalf of survivors. Additionally, Dr. Van Schaack has served as Deputy to the Ambassador-at-Large for War Crimes Issues in the Office of Global Criminal Justice of the U.S. Department of State. In that capacity, she helped to advise the Secretary of State and the Under Secretary for Civilian Security, Democracy and Human Rights on the formulation of U.S. policy regarding the prevention of and accountability for mass atrocities, such as torture, war crimes, crimes against humanity, and genocide.

7. *Amicus curiae* Dr. Reicherter, M.D., is the Program's director and is also a Senior Fellow at the Center for Innovations in Global Health at Stanford University.² Dr. Reicherter is a clinical professor at Stanford University School of Medicine's Department of Psychiatry and Behavioral Sciences. He has expertise in the area of cross-cultural trauma psychiatry, having spent more than a decade providing a combination of administrative and clinical services in trauma mental health locally and internationally. He is on the List of Experts for the Extraordinary Chambers in the Courts of Cambodia and for the United Nations' International Criminal Court. He is on the Fulbright Specialists Roster for his work in international trauma mental health. He has cultivated new clinical rotations for residency education and medical school education in the

¹ Dr. Van Schaack's Stanford University profile is available at: <https://profiles.stanford.edu/beth-van-schaack>.

² Dr. Reicherter's Stanford University profile is available at: <https://profiles.stanford.edu/daryn-reicherter>.

community clinics that he operates and created new opportunities for resident, medical student, and undergraduate education in Global Mental Health. He also has been involved in the establishment of clinical mental health programs for underserved populations in the San Francisco Bay Area. He is the Faculty Adviser for the Stanford's Free Clinic Mental Health Program.

8. *Amicus curiae* Dr. Matlow, Ph.D., is a child clinical psychologist who serves as Director of Community Programs for Stanford's Early Life Stress and Resilience Program.³ Dr. Matlow is a clinical assistant professor at Stanford University School of Medicine's Department of Psychiatry and Behavioral Sciences. His clinical and research efforts focus on understanding and addressing the impact of stress, adversity, and trauma in children, families, and communities. Dr. Matlow has worked extensively in providing trauma-focused psychological evaluation, treatment, and advocacy services with immigrant youth and families, with a focus on immigrants from Latin American countries. He has developed and implemented clinical interventions specifically tailored to address immigration-related stress including common traumas experienced before, during, and after migration. He has conducted psychological evaluation of children and caregivers impacted by family separation in litigation and clinical service contexts. Furthermore, Dr. Matlow has participated in the monitoring and psychological evaluation of migrant children in federal immigration custody. In 2018 and 2019, he visited Office of Refugee Resettlement-contracted shelters and influx facilities to conduct site inspections and child interviews for the purposes of evaluating the mental health and physical wellness of the children detained at these facilities, as part of ongoing monitoring under the *Flores* Settlement Agreement. In 2019 and 2020, Dr. Matlow conducted similar monitoring and evaluation of the psychological impact of the

³ Dr. Matlow's Stanford University profile is available at: <https://profiles.stanford.edu/ryan-matlow>.

Migrant Protection Protocol through observation and interviewing at various shelter and child care facilities in Mexico. Based on these experiences, Dr. Matlow has prepared and submitted expert reports and declarations and in briefings for the U.S. Senate and House of Representatives.

9. Drs. Reicherter and Matlow have served as expert witnesses in human rights cases in U.S. and international courts.

ARGUMENT

10. *Amici curiae* are uniquely situated to provide the Court with insights as to why family separation causes extreme pain and suffering that constitutes torture under international and U.S. law. Therefore, under its broad discretion, the Court should be permit their *amicus* brief.

11. Federal district courts possess “broad discretion” to permit the filing of *amicus* briefs. *Auto. Club of New York, Inc. v. Port Auth. of New York & New Jersey*, No. 11 CIV. 6746 RJH, 2011 WL 5865296, at *1 (S.D.N.Y. Nov. 22, 2011). As courts have explained, “[t]he usual rationale for amicus curiae submissions is that they are of aid to the court and offer insights not available from the parties.” *Id.* This brief, attached hereto as **Exhibit A**, fulfills those purposes.

12. *Amici curiae*’s proposed brief presents important perspectives that underscore the United States’ failure to comply with a most fundamental principles of international law: the right to freedom from torture. *Amici curiae*’s extensive experience in international human rights and clinical psychology offers the Court unique insights into the severe physical and mental harms endured by Plaintiffs. *Amici curiae*’s perspectives explain how the Trump Administration’s family separation policy constitutes torture under international and domestic law by causing severe pain and suffering to children and their asylum-seeking parents.

13. Counsel for Plaintiffs has consented to the filing of this brief, and counsel for Defendants have indicated that they take no position on the matter.

14. Finally, no party or counsel for a party authored the brief in whole or in part, and no party, counsel for a party, or person other than *amici*, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

WHEREFORE, leave to file the attached *amici curiae* brief should be granted.

Dated: December 22, 2020

Respectfully Submitted,

/s/ Brian J. Fischer

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2020, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will provide electronic notice and an electronic link to this document to all attorneys of record.

/s/ Brian J. Fischer

Brian J. Fischer